

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE NATIONAL PRESCRIPTION
OPIATE LITIGATION

This document relates to:

*The County of Summit, Ohio, et al. v. Purdue
Pharma L.P., et al.*

Case No. 18-op-45090

MDL No. 2804

Case No. 17-md-2804

Hon. Dan Aaron Polster

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF THE MANUFACTURER
DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED
COMPLAINT**

PLEASE TAKE NOTICE that, pursuant to Federal Rule of Evidence 201, the Manufacturer Defendants hereby request that the Court take judicial notice of the following documents in support of the Manufacturer Defendants' Joint Motion to Dismiss Plaintiffs' Second Amended Complaint. All exhibit references correspond to the exhibits attached to the Declaration of Charles C. Lifland, filed contemporaneously in support of the above-referenced motion.

1. Exhibit A: Letter from Food and Drug Administration ("FDA") to Physicians for Responsible Opioid Prescribing ("PROP") (Sept. 10, 2013);
2. Exhibit B: The complaint in *State of Ohio ex rel. Mike DeWine v. Purdue Pharma L.P. et al.*, Case No. 2017 CI 261 (Ohio Ct. Com. Pleas May 31, 2017);
3. Exhibit C: The prescription drug label for NUCYNTA® ER approved by the FDA as revised December 2016;

4. Exhibit D: The prescription drug label for OXYCONTIN® approved by the FDA as revised December 2016;

5. Exhibit E: The prescription drug label for ACTIQ® approved by the FDA as revised December 2016;

6. Exhibit F: The prescription drug label for FENTORA® approved by the FDA as revised December 2016;

7. Exhibit G: The prescription drug label for SUBSYS® approved by the FDA as revised December 2016;

8. Exhibit H: The prescription drug label for KADIAN® approved by the FDA as revised December 2016;

9. Exhibit I: The prescription drug label for OPANA® ER approved by the FDA as revised December 2016;

10. Exhibit J: The prescription drug label for EXALGO® approved by the FDA as revised September 2016;

11. Exhibit K: An FDA press release entitled *FDA to Approve Shared System REMS for TIRF Products* (Dec. 29, 2011); and

12. Exhibit L: Transmucosal Immediate Release Fentanyl (“TIRF”) Risk Evaluation and Mitigation Strategy (“REMS”).

All these exhibits are properly subject to judicial notice. The FDA Letter (Exhibit A) and REMS (Exhibit L) are “matter[s] of public record and there is no dispute between the Parties about [their] authenticity.” *Ramirez v. Medtronic, Inc.*, 961 F. Supp. 2d 977, 984 (D. Ariz. 2013); *see, e.g., Gustavson v. Wrigley Sales Co.*, 961 F. Supp. 2d 1100, 1113 n.1 (N.D. Cal. 2013)

(taking judicial notice of FDA response letter); *Natco Pharma Ltd. v. Gilead Scis., Inc.*, 2015 WL 5718398, at *1 n.2 (D. Minn. Sept. 29, 2015) (taking judicial notice of REMS).

Similarly, courts routinely take judicial notice of FDA-approved drug labels (Exhibits C-J) and press releases (Exhibit K). *See, e.g., Aaron v. Medtronic, Inc.*, 209 F. Supp. 3d 994, 1014 (S.D. Ohio 2016) (citing *Chapman v. Abbott Labs.*, 930 F. Supp. 2d 1321, 1323 (M.D. Fla. 2013) (FDA drug label)); *Kiker v. SmithKline Beecham Corp.*, 2016 WL 8189286, at *4 n.3 (S.D. Ohio Dec. 15, 2016) (press releases); *see also Beaver Cty. Ret. Bd. v. LCA-Vision Inc.*, 2009 WL 806714, at *7 (S.D. Ohio Mar. 25, 2009) (finding that accuracy of press releases cannot be reasonably questioned, and noting that “[p]ress releases also are self-authenticating under evidentiary rule 902(6)”).

Finally, the Ohio Attorney General’s Complaint (Exhibit B) is subject to judicial notice as it is a filing in a court of record. *See Lyons v. Stovall*, 188 F.3d 327, 332 n.3 (6th Cir. 1999) (“[F]ederal courts may take judicial notice of proceedings in other courts of record.” (citation omitted)); *In re Huffy Corp. Sec. Litig.*, 577 F. Supp. 2d 968, 981-82 (S.D. Ohio 2008) (taking judicial notice of allegations made in complaint in another proceeding).

WHEREFORE, the Manufacturer Defendants respectfully request that the Court take judicial notice of the abovementioned exhibits.

Dated: May 25, 2018

Respectfully submitted,

/s/ Charles C. Lifland (consent)

Charles C. Lifland
O’MELVENY & MYERS LLP
400 S. Hope Street
Los Angeles, CA 90071

Telephone: (213) 430-6000
Facsimile: (213) 430-6407
clifland@omm.com

*Attorney for Defendants Janssen
Pharmaceuticals, Inc., Johnson &
Johnson, Janssen Pharmaceutica, Inc.
n/k/a Janssen Pharmaceuticals, Inc., and
Ortho-McNeil-Janssen Pharmaceuticals,
Inc. n/k/a Janssen Pharmaceuticals, Inc.*

/s/ Mark S. Cheffo (consent)

Sheila L. Birnbaum
Mark S. Cheffo
Hayden A. Coleman
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000
Fax: (212) 849-7100
sheilabirnbaum@quinnemanuel.com
markcheffo@quinnemanuel.com
haydencoleman@quinnemanuel.com

*Counsel for Defendants Purdue Pharma
L.P., Purdue Pharma Inc., and The Purdue
Frederick Company*

/s/ Jonathan L. Stern (consent)

Jonathan L. Stern
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Ave. NW
Washington, DC 20001
Phone: 202-942-5000
Fax: 202-942-5999
Email: jonathan.stern@arnoldporter.com

Sean O. Morris
Arnold & Porter Kaye Scholer LLP

777 S. Figueroa St., Suite 4400
Los Angeles, CA 90017
Phone: 213-243-4000
Fax: 213-243-4199
Email: sean.morris@arnoldporter.com

*Attorneys for Endo Health Solutions Inc.
and Endo Pharmaceuticals Inc.*

*Attorneys for Par Pharmaceutical, Inc.,
and Par Pharmaceutical Companies, Inc.
f/k/a Par Pharmaceutical Holdings, Inc.
(and n/k/a Endo Generics Holding) (not yet
served or appearing)*

/s/ Steven A. Reed (consent)

Steven A. Reed
Eric W. Sitarchuk
Rebecca J. Hillyer
MORGAN, LEWIS & BOCKIUS LLP
1701 Market St.
Philadelphia, PA 19103-2921
T: 215.963.5603
F: 215.963.5001
steven.reed@morganlewis.com
eric.sitarchuk@morganlewis.com
rebecca.hillyer@morganlewis.com

Brian M. Ercole
MORGAN, LEWIS & BOCKIUS LLP
200 S. Biscayne Blvd., Suite 5300
Miami, FL 33131-2339
(305) 415-3000
brian.ercole@morganlewis.com

*Attorneys for Teva Pharmaceuticals,
U.S.A., Inc., Cephalon, Inc., Watson
Laboratories, Inc., Actavis LLC, and
Actavis Pharma, Inc.*

/s/ Donna M. Welch (consent)

Donna M. Welch, P.C.
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
(312) 862-2000
donna.welch@kirkland.com

*Counsel for Allergan Finance, LLC f/k/a
Actavis, Inc. f/k/a Watson Pharmaceuticals,
Inc.*

/s/ Eric H. Zagrans (consent)

Eric H. Zagrans (0013108)
ZAGRANS LAW FIRM LLC
6100 Oak Tree Boulevard, Suite 200
Cleveland, Ohio 44131
Telephone: 216.771.1000
Facsimile: 866.261.2008
eric@zagrans.com

J. Matthew Donohue
Joseph L. Franco
HOLLAND & KNIGHT LLP
2300 U.S. Bancorp Tower
111 S.W. Fifth Avenue
Portland, OR 97204
Telephone: 503.243.2300
Facsimile: 503.241.8014
matt.donohue@hklaw.com
joe.franco@hklaw.com

Nicholas A. Sarokhanian
HOLLAND & KNIGHT LLP
200 Crescent Court, Suite 1600
Dallas, TX 75201
Telephone: 214.964.9500
Facsimile: 214.964.9501
nicholas.sarokhanian@hklaw.com

Counsel for Insys Therapeutics, Inc.

/s/ Brien T. O'Connor (consent)

Brien T. O'Connor
Andrew J. O'Connor
ROPES & GRAY LLP
Prudential Tower
800 Boylston St.
Boston, MA 02199-3600
(617) 235-4650
Brien.O'Connor@ropesgray.com
Andrew.O'Connor@ropesgray.com

Attorneys for Defendant Mallinckrodt LLC

/s/ Daniel G. Jarcho (consent)

Daniel G. Jarcho*
D.C. Bar No. 391837
ALSTON & BIRD LLP
950 F Street NW
Washington, DC 20004
Telephone: (202) 239-3254
Facsimile: (202) 239-333
daniel.jarcho@alston.com

Cari K. Dawson*
Georgia Bar No. 213490
Jenny A. Mendelsohn*
Georgia Bar No. 447183
ALSTON & BIRD LLP
1201 West Peachtree Street NW
Atlanta, GA 30309
Tel.: (404) 881-7000
Fax: (404) 881-7777
cari.dawson@alston.com
jenny.mendelsohn@alston.com

Attorneys for Noramco, Inc.

** denotes national counsel who will seek
pro hac vice admission*

CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2018, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Dated: May 25, 2018

/s/ Charles C. Lifland

Charles C. Lifland
O'MELVENY & MYERS LLP
400 S. Hope Street
Los Angeles, CA 90071
Telephone: (213) 430-6000
Facsimile: (213) 430-6407
clifland@omm.com

*Attorney for Defendants Janssen
Pharmaceuticals, Inc., Johnson &
Johnson, Janssen Pharmaceutica, Inc.
n/k/a Janssen Pharmaceuticals, Inc., and
Ortho-McNeil-Janssen Pharmaceuticals,
Inc. n/k/a Janssen Pharmaceuticals, Inc.*